

AMENDED IN ASSEMBLY MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2492

Introduced by Assembly Member Jones-Sawyer

February 21, 2014

~~An act to amend Section 54956.8 of the Government Code, relating to local government. An act to amend Section 11550 of the Health and Safety Code, relating to controlled substances.~~

LEGISLATIVE COUNSEL’S DIGEST

AB 2492, as amended, Jones-Sawyer. ~~Local agencies; meetings; real property transactions.~~ *Controlled substances; sentencing.*

Existing law prohibits a person from using or being under the influence of certain controlled substances, except as specified. A person convicted of violating this prohibition is guilty of a misdemeanor and the court is required to sentence the person to not less than 90 days or more than one year in a county jail. The court is authorized to place a person convicted under this provision on probation for not more than 5 years, and the court is required, as a condition of granting probation, to order the person to serve at least 90 days in a county jail. The court is prohibited, except with regards to specified drug treatment provisions, from absolving a person convicted under this provision from serving at least 90 days in a county jail.

This bill would delete the requirement that a person convicted under this provision serve at least 90 days in a county jail, and would delete the requirement that, as a condition of granting probation, the person serve at least 90 days in a county jail. The bill would make additional conforming changes. The bill would also authorize the court to grant

probation for not more than 5 years in addition to any jail sentence imposed.

~~Existing law, the Ralph M. Brown Act, requires all meetings of the legislative body of a local agency to be open and public, with specified exceptions. Existing law authorizes a legislative body of a local agency, after holding an open and public session as specified, to hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.~~

~~This bill would instead authorize the legislative body to hold a closed session to grant authority to the negotiator regarding the price and terms of the purchase, sale, exchange, or lease.~~

~~Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

~~This bill would make legislative findings to that effect.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 11550 of the Health and Safety Code is*
2 *amended to read:*
3 11550. (a) ~~No person~~ *A person shall not* use, or be under the
4 influence of any controlled substance ~~which~~ *that* is (1) specified
5 in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f)
6 of Section 11054, specified in paragraph (14), (15), (21), (22), or
7 (23) of subdivision (d) of Section 11054, specified in subdivision
8 (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of
9 subdivision (d) or in paragraph (3) of subdivision (e) of Section
10 11055, or (2) a narcotic drug classified in Schedule III, IV, or V,
11 except when administered by or under the direction of a person
12 licensed by the state to dispense, prescribe, or administer controlled
13 substances. It shall be the burden of the defense to show that it
14 comes within the exception. ~~Any~~ *A person convicted of violating*
15 this subdivision is guilty of a misdemeanor and shall be sentenced
16 to serve a term of not ~~less than 90 days or~~ more than one year in

1 a county jail. The court may *also* place a person convicted under
2 this subdivision on probation for a period not to exceed five years
3 and, ~~except as provided in subdivision (c), shall in all cases in~~
4 ~~which probation is granted require, as a condition thereof, that the~~
5 ~~person be confined in a county jail for at least 90 days. Other than~~
6 ~~as provided by subdivision (c), in no event shall the court have the~~
7 ~~power to absolve a person who violates this subdivision from the~~
8 ~~obligation of spending at least 90 days in confinement in a county~~
9 ~~jail. years.~~

10 (b) ~~Any~~ (1) A person who ~~(1)~~ is convicted of violating
11 subdivision (a) when the offense occurred within seven years of
12 that person being convicted of two or more separate violations of
13 that subdivision, and ~~(2)~~ refuses to complete a licensed drug
14 rehabilitation program offered by the court pursuant to subdivision
15 (c), shall be punished by imprisonment in a county jail for not less
16 than 180 days nor more than one year. In no event does the court
17 have the power to absolve a person convicted of a violation of
18 subdivision (a) ~~that~~ who is punishable under this subdivision from
19 the obligation of spending at least 180 days in confinement in a
20 county jail unless there are no licensed drug rehabilitation programs
21 reasonably available.

22 ~~For~~
23 (2) ~~For~~ the purpose of this section, a drug rehabilitation program
24 ~~shall not be considered~~ *is not* reasonably available unless the person
25 *is not* required to pay ~~no~~ more than the court determines that he
26 or she is reasonably able to ~~pay~~, *pay* in order to participate in the
27 program.

28 (c) (1) The court may, when it would be in the interest of
29 justice, permit ~~any~~ a person convicted of a violation of subdivision
30 (a) punishable under subdivision (a) or (b) to complete a licensed
31 drug rehabilitation program in lieu of part or all of the
32 imprisonment ~~in the~~ a county jail. As a condition of sentencing,
33 the court may require the offender to pay all or a portion of the
34 drug rehabilitation program.

35 ~~In~~
36 (2) *In* order to alleviate jail overcrowding and to provide
37 recidivist offenders with a reasonable opportunity to seek
38 rehabilitation pursuant to this subdivision, counties are encouraged
39 to include provisions to augment licensed drug rehabilitation

1 programs in their substance abuse proposals and applications
2 submitted to the state for federal and state drug abuse funds.

3 (d) In addition to any fine assessed under this section, the judge
4 may assess a fine not to exceed seventy dollars (\$70) against ~~any~~
5 *a* person who violates this section, with the proceeds of this fine
6 to be used in accordance with Section 1463.23 of the Penal Code.
7 The court shall, however, take into consideration the defendant's
8 ability to pay, and ~~no~~ *a* defendant shall *not* be denied probation
9 because of his or her inability to pay the fine permitted under this
10 subdivision.

11 (e) ~~(1)~~ Notwithstanding subdivisions (a) and (b) or any other
12 ~~provision of law, any~~ *a* person who is unlawfully under the
13 influence of cocaine, cocaine base, heroin, methamphetamine, or
14 phencyclidine while in the immediate personal possession of a
15 loaded, operable firearm is guilty of a public offense punishable
16 by imprisonment in a county jail for not exceeding one year or in
17 state prison.

18 ~~As~~

19 (2) *As* used in this subdivision "immediate personal possession"
20 includes, but is not limited to, the interior passenger compartment
21 of a motor vehicle.

22 (f) Every person who violates subdivision (e) is punishable
23 upon the second and each subsequent conviction by imprisonment
24 in the state prison for two, three, or four years.

25 ~~(g) Nothing in this section prevents~~ *This section does not*
26 *prevent* deferred entry of judgment or a defendant's participation
27 in a preguilty plea drug court program under Chapter 2.5
28 (commencing with Section 1000) of Title 6 of Part 2 of the Penal
29 Code unless the person is charged with violating subdivision (b)
30 or (c) of Section 243 of the Penal Code. A person charged with
31 violating this section by being under the influence of any controlled
32 substance which is specified in paragraph (21), (22), or (23) of
33 subdivision (d) of Section 11054 or in paragraph (3) of subdivision
34 (e) of Section 11055 and with violating either subdivision (b) or
35 (c) of Section 243 of the Penal Code or with a violation of
36 subdivision (e) shall be ineligible for deferred entry of judgment
37 or a preguilty plea drug court program.

38 ~~SECTION 1. Section 54956.8 of the Government Code is~~
39 ~~amended to read:~~

1 ~~54956.8.—Notwithstanding any other provision of this chapter,~~
2 ~~a legislative body of a local agency may hold a closed session with~~
3 ~~its negotiator prior to the purchase, sale, exchange, or lease of real~~
4 ~~property by or for the local agency to grant authority to its~~
5 ~~negotiator regarding the price and terms for the purchase, sale,~~
6 ~~exchange, or lease.~~

7 ~~However, prior to the closed session, the legislative body of the~~
8 ~~local agency shall hold an open and public session in which it~~
9 ~~identifies its negotiators, the real property or real properties which~~
10 ~~the negotiations may concern, and the person or persons with whom~~
11 ~~its negotiators may negotiate.~~

12 ~~For purposes of this section, negotiators may be members of the~~
13 ~~legislative body of the local agency.~~

14 ~~For purposes of this section, “lease” includes renewal or~~
15 ~~renegotiation of a lease.~~

16 ~~Nothing in this section shall preclude a local agency from holding~~
17 ~~a closed session for discussions regarding eminent domain~~
18 ~~proceedings pursuant to Section 54956.9.~~

19 ~~SEC. 2.—The Legislature finds and declares that Section 1 of~~
20 ~~this act, which amends Section 54956.8 of the Government Code,~~
21 ~~imposes a limitation on the public’s right of access to the meetings~~
22 ~~of public bodies or the writings of public officials and agencies~~
23 ~~within the meaning of Section 3 of Article I of the California~~
24 ~~Constitution. Pursuant to that constitutional provision, the~~
25 ~~Legislature makes the following findings to demonstrate the interest~~
26 ~~protected by this limitation and the need for protecting that interest:~~

27 ~~Local agencies increasingly are entering into more sophisticated~~
28 ~~and complex real estate transactions requiring the negotiation of~~
29 ~~nonmonetary terms outside the scope of the “price and terms of~~
30 ~~payment” that constitute valuable consideration. A local agency~~
31 ~~must be authorized to consider all of the terms of a real estate~~
32 ~~transaction in closed session in order to preserve its negotiating~~
33 ~~position so as to strike the best bargain in the public interest.~~